

REMARKS/ARGUMENTS

The Applicants hereby thank the Examiner for the observations in the outstanding Office Action and for withdrawing the rejection of the Claims, under 35 U.S.C. § 112, first paragraph. Responsive to the outstanding Office Action, the Applicants provide the foregoing amendments, notwithstanding the Applicants' belief that the claims would have been allowable as originally filed. Claims 1, 15, 16, 21, and 25 are herein amended to better encompass the present invention. The Applicants respectfully assert that no claim has been narrowed within the meaning of *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.* (Fed.Cir. November 29, 2000). By way of the foregoing amendment, the Applicants have made a diligent effort to place the claims in condition for allowance and, alternatively, in condition for appeal. Thus, reconsideration of the Claims in view of the foregoing amendment and these remarks is respectfully requested. However, should any remaining issues be outstanding, the Examiner is respectfully requested to telephone Mr. Thomas F. Lebens at (805) 781-2865 so that such issues may be expeditiously resolved.

I. Rejection of Claims 1-6 and 8-15 under 35 U.S.C. § 103(a)

Claims 1-6 and 8-15 stand rejected, under 35 U.S.C. § 103(a), as being unpatentable over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900), and in further view of Taniguchi (US 2003/0093810). The Applicants respectfully traverse this ground for rejection on this basis.

Claims 1 and 15 are herein generally amended by inserting "in real-time" after "receiving a vote" and by inserting "the at least one display device comprising at least one element selected from a group consisting essentially of a playback head, an information display area, a playback ring, and a rating value icon" after "display device." This amendment is fully supported by the originally filed Specification (p. 13, l. 11; p. 19, ll. 21-23).

With respect to the primary cited reference, Franken et al. merely discloses a system that rates “rerun programming in other than real time,” storing the rerun programming in separate smaller files for delivery in its entirety to the viewer, but does not actually disclose or imply segmenting each item of rerun programming (Abstract; col. 4, ll. 16-30; col. 5, ll. 20-28).

With respect to the secondary cited reference, Zilliacus merely discloses: “A method allows a user of a mobile terminal to participate in an interactive service relating to multimedia programming. A software application is stored in the mobile terminal. The software application is launched so that it is prepared to receive information concerning the interactive service from a server. Upon receipt of this information, the software application utilizes a stored user interface to prompt the user of the mobile terminal. The software application utilizes previous received information concerning the user so that when the information is received, the user interface prompting the user is provided automatically and without the need for user approval.” Thus, the Zilliacus invention is actually a method for ranking programming by voting, but does not actually disclose or imply segmenting each item of rerun programming (Abstract; Fig. 6; Para. 27).

With respect to the tertiary cited reference, Taniguchi merely discloses: “In a video data transmitting method of sending in real-time video data being externally inputted, when encoding video data being inputted as stream data, start and stop of an encoding process is repeated at a predetermined time interval to carry out a data dividing process whereby a plurality of time-continuous video data are generated as partial video data. Also, metadata of partial video data is generated, which is sent, together with the partial video data, in real-time as partial video metadata.” (Abstract).

In contrast to the cited art, the present invention involves the following salient features, *inter alia*: “receiving at least one string of content, the at least one string of content receiving step comprising **streaming the at least one string of content in real-time** for viewing while being captured; **separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-**

and-out points; creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, **the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points**, thereby providing a plurality of in-and-out points within each segment; showing the at least one string of content on at least one display device, **the display device comprising at least one element selected from a group consisting essentially of a playback head, a an information display area, a playback ring, and a rating value icon**; receiving a vote in real-time on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content, thereby providing a **rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment[.]**” [Emphasis added.]

As such, the Applicants respectfully submit that the cited art does not teach, suggest, motivate, or otherwise obviate the combination of elements and limitations as respectively recited in herein amended independent Claims 1 and 15 of the present application:

1. A method of **interactively displaying and rating** at least one string of content, comprising:

receiving at least one string of content, the at least one string of content receiving step comprising streaming the at least one string of content in real-time for viewing while being captured;

separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;

creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

showing the at least one string of content on at least one display device, the display device comprising at least one element selected from a group consisting essentially of a playback head, an information display area, a playback ring, and a rating value icon;

receiving a vote in real-time on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment; and

updating the profile information associated with each segment of the plurality of segments of each at least one string of content to reflect the vote using the rating value. [Emphasis added.]

15. A system for interactively displaying and rating at least one string of content, comprising:

means for receiving at least one string of content, the at least one string of content streaming in real-time for viewing while being captured;

means for separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;

means for creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

means for showing the at least one string of content on at least one display device, the at least one display device comprising at least one element selected from a group consisting essentially of a playback head, an information display area, a playback ring, and a rating value icon;

means for receiving a vote in real-time on each segment of the plurality of segments of the at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content, whereby a rating value is provided for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment; and

means for updating the profile information associated with each segment of the plurality of segments of each at least one string of content to reflect the vote using the rating value.
[Emphasis added.]

Accordingly, Claims 2-6 and 8-14 subsume the limitations of their respective base claims by dependency.

Thus, the Applicants respectfully submit that Claims 1-6 and 8-15 have not been taught, suggested, motivated, or otherwise obviated in any other manner by the cited art. Therefore, the Applicants respectfully request that the previous ground for rejection on this basis is withdrawn and that Claims 1-6 and 8-15 are passed to allowance in due course.

II. Rejection of Claims 7, 16, 17, 20-26, and 28 under 35 U.S.C. § 103(a)

Claims 7, 16, 17, 20-26, and 28 have been previously rejected, under 35 U.S.C. § 103(a), as being unpatentable over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900), in view of Taniguchi (US 2003/0093810), and in further view of Peliotis (US 2002/0065678), in the October 29, 2008, Office Action. The Applicants respectfully traverse this ground for rejection on this basis.

Claims 1, 16, 21, and 25 are herein generally amended by inserting “in real-time” after “receiving a vote” and by inserting “the at least one display device comprising at least one element selected from a group consisting essentially of a playback head, an information display area, a playback ring, and a rating value icon” after “display device.” This amendment is fully supported by the originally filed Specification (p. 13, l. 11; p. 19, ll. 21-23).

With respect to the primary cited reference, Franken et al. merely discloses a system that rates “rerun programming in other than real time,” storing the rerun programming in separate smaller files for delivery in its entirety to the viewer, but does not actually disclose or imply segmenting each item of rerun programming (Abstract; col. 4, ll. 16-30; col. 5, ll. 20-28).

With respect to the secondary cited reference, Zilliacus merely discloses: “A method allows a user of a mobile terminal to participate in an interactive service relating to multimedia programming. A software application is stored in the mobile terminal. The software application is launched so that it is prepared to receive information concerning the interactive service from a server. Upon receipt of this information, the software application utilizes a stored user interface to prompt the user of the mobile terminal. The software application utilizes previous received information concerning the user so that when the information is received, the user interface prompting the user is provided automatically and without the need for user approval.” Thus, the Zilliacus invention is actually a method for ranking programming by voting, but does not actually disclose or imply segmenting each item of rerun programming (Abstract; Fig. 6; Para. 27).

With respect to the tertiary cited reference, Taniguchi merely discloses: “In a video data transmitting method of sending in real-time video data being externally inputted, when encoding video data being inputted as stream data, start and stop of an encoding process is repeated at a predetermined time interval to carry out a data dividing process whereby a plurality of time-continuous video data are generated as partial video data. Also, metadata of partial video data is generated, which is sent, together with the partial video data, in real-time as partial video metadata.” (Abstract).

With respect to the quaternary cited reference, Peliotis merely discloses segmenting a video program by generating markers and tags to define each segment, but does not disclose or imply segmenting a video program and “establishing a quantifiable significance corresponding to the plurality of in-and-out points” by way of a “rating value” as a result of voter input within any given segment (Abstract; Fig. 1; Para. 23). Peliotis further discloses that the markers and tags are fed to the filter/comparator along with, but not as a result of, the user preferences (Fig. 2).

In contrast to the cited art, the present invention involves the following salient features, *inter alia*: “receiving at least one string of content, the at least one string of content receiving step comprising **streaming the at least one string of content in real-time** for viewing while being captured; **separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points**; creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, **the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points**, thereby providing a plurality of in-and-out points within each segment; showing the at least one string of content on at least one display device, **the display device comprising at least one element selected from a group consisting essentially of a playback head, a an information display area, a playback ring, and a rating value icon**; receiving a vote in real-time on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content, thereby providing a **rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment**[.]” [Emphasis added.]

Further, the Applicants respectfully submit that the previous Examiner may have inadvertently engaged in impermissible hindsight reconstruction, especially in light of the inordinate number of references cited, four references, by using the Applicants’ invention in order to arrive at Claims 7, 16, 17, 20-26, and 28. Reiterating, the Examiner concedes: (1) that Franken fails to teach “separating each at least one string of content into a plurality of in-and-out

points corresponding to each segment, wherein each segment has a plurality of original in-and-out points and herein the record identifies a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment” and (2) that Franken fails to teach “a vote, reflecting the quality of each segment of the content, is received on the content, thereby providing a rating value having a quantifiable significance to the in-and-out points and that the profile information is updated according to the vote.” As such, the Examiner concedes that the primary reference fails to disclose at least three of the claimed limitations, but cites the secondary reference, the tertiary reference, and the quaternary reference for reconstructing the present invention. Yet Claims 7, 16, 17, 20-26, and 28 recite a combination of elements and limitations that include features well beyond what even these four cited references may, at best, disclose.

As such, the Applicants respectfully submit that the cited art does not teach, suggest, motivate, or otherwise obviate the combination of elements and limitations as respectively recited in herein amended independent Claims 1, 15, 16, 21, and 25 of the present application:

1. A method of interactively displaying and rating at least one string of content, comprising:

receiving at least one string of content, the at least one string of content receiving step comprising streaming the at least one string of content in real-time for viewing while being captured;

separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;

creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

showing the at least one string of content on at least one display device, the display device comprising at least one element selected from a group consisting essentially of a playback head, an information display area, a playback ring, and a rating value icon;

receiving a vote in real-time on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment; and

updating the profile information associated with each segment of the plurality of segments of each at least one string of content to reflect the vote using the rating value. [Emphasis added.]

15. A system for interactively displaying and rating at least one string of content, comprising:

means for receiving at least one string of content, the at least one string of content streaming in real-time for viewing while being captured;

means for separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;

means for creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

means for showing the at least one string of content on at least one display device, the at least one display device comprising at least one element selected from a group consisting essentially of a playback head, an information display area, a playback ring, and a rating value icon;

means for receiving a vote in real-time on each segment of the plurality of segments of the at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content, whereby a rating value is provided for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment; and

means for updating the profile information associated with each segment of the plurality of segments of each at least one string of content to reflect the vote using the rating value. [Emphasis added.]

16. A method of interactively displaying and rating at least one string of content, comprising the steps of:

identifying at least one string of content, the at least one string of content identifying step comprising streaming the at least one string of content in real-time for viewing while being captured;

separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;

creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

showing the at least one string of content to a plurality of viewers on at least one display device, the at least one display device comprising at least one element selected from a group consisting essentially of a playback head, an information display area, a playback ring, and a rating value icon;

receiving a vote in real-time on each segment of the plurality of segments of the at least one string of content from each of the plurality of viewers, wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment;

determining a rating value for each segment of the plurality of segments of the at least one string of content based on the vote; and

displaying each segment of the plurality of segments of the at least one string of content to the plurality of viewers based on the rating value of each segment of the plurality of segments of the at least one string of content. [Emphasis added.]

21. A device for interactively displaying and rating at least one string of content, comprising:

a content identification module for detecting at least one string of content and for separating the at least one string of content into a plurality of segments, each segment of the

plurality of segments having a corresponding plurality of original in-and-out points, the at least one string of content streaming in real-time for viewing while being captured;

a storage module for storing the at least one string of content and a profile information, in a record, associated with each segment of the plurality of segments of the at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

an interface module for receiving the at least one string of content and transmitting the at least one string of content, based on the profile information corresponding to each segment of the plurality of segments of the at least one string of content, to at least one display device, the at least one display device comprising at least one element selected from a group consisting essentially of a playback head, an information display area, a playback ring, and a rating value icon; and

a content rating module for receiving a rating value from a viewer in real-time for each segment of the plurality of segments of the at least one string of content, whereby a rating value is provided for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment, and for updating the profile information associated with each segment of the plurality of segments of the at least one string of content, wherein the rating value reflects the quality of each segment of the plurality of segments of the at least one string of content. [Emphasis added.]

25. A computer-readable medium having computer-executable instructions for performing a method comprising:

identifying at least one string of content, the at least one string of content identifying step comprising streaming the at least one string of content in real-time for viewing while being captured;

separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;

creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

showing the at least one string of content to a plurality of viewers via at least one display device, the at least one display device comprising at least one element selected from a group consisting essentially of a playback head, an information display area, a playback ring, and a rating value icon;

receiving a vote in real-time on each segment of the plurality of segments of the at least one string of content from each of the plurality of viewers, wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment;

determining a rating value for each segment of the plurality of segments of the at least one string of content based on the vote; and

displaying each segment of the plurality of segments of the at least one string of content to the plurality of viewers based on the rating value of each segment of the plurality of segments of the at least one string of content. [Emphasis added.]

Accordingly, Claims 7, 17, 20, 22-24, 26, and 28 subsume the limitations of their respective base claims by dependency.

Thus, the Applicants respectfully submit that Claims 7, 16, 17, 20-26, and 28 have not been taught, suggested, motivated, or obviated in any other manner by the cited art. Therefore, the Applicants respectfully request that the previous ground for rejection on this basis is withdrawn and that Claims 7, 16, 17, 20-26, and 28 are passed to allowance in due course.

III. Rejection of Claim 18 under 35 U.S.C. § 103(a)

Claims 7, 16, 17, 20-26, and 28 stand rejected, under 35 U.S.C. § 103(a), as being unpatentable over Franken et al. (US 7028323), in view of Zilliacus (US 2004/0005900), in view of Taniguchi (US 2003/0093810), and in further view of Peliotis (US 2002/0065678), and in further view of Lautzenheiser et al. (US 7054827), in the October 29, 2008, Office Action. The Applicants respectfully traverse this ground for rejection on this basis.

Claim 16 is herein generally amended by inserting “in real-time” after “receiving a vote” and by inserting “the at least one display device comprising at least one element selected from a group consisting essentially of a playback head, an information display area, a playback ring, and a rating value icon” after “display device.” This amendment is fully supported by the originally filed Specification (p. 13, l. 11; p. 19, ll. 21-23).

With respect to the primary cited reference, Franken et al. merely discloses a system that rates “rerun programming in other than real time,” storing the rerun programming in separate smaller files for delivery in its entirety to the viewer, but does not actually segment each item of rerun programming (Abstract; col. 4, ll. 16-30; col. 5, ll. 20-28).

With respect to the secondary cited reference, Zilliacus merely discloses: “A method allows a user of a mobile terminal to participate in an interactive service relating to multimedia programming. A software application is stored in the mobile terminal. The software application is launched so that it is prepared to receive information concerning the interactive service from a server. Upon receipt of this information, the software application utilizes a stored user interface to prompt the user of the mobile terminal. The software application utilizes previous received

information concerning the user so that when the information is received, the user interface prompting the user is provided automatically and without the need for user approval.” Thus, the Zilliacus invention is actually a method for ranking programming by voting, but does not actually disclose or imply segmenting each item of rerun programming (Abstract; Fig. 6; Para. 27).

With respect to the tertiary cited reference, Taniguchi merely discloses: “In a video data transmitting method of sending in real-time video data being externally inputted, when encoding video data being inputted as stream data, start and stop of an encoding process is repeated at a predetermined time interval to carry out a data dividing process whereby a plurality of time-continuous video data are generated as partial video data. Also, metadata of partial video data is generated, which is sent, together with the partial video data, in real-time as partial video metadata.” (Abstract).

With respect to the quaternary cited reference, Peliotis merely discloses segmenting a video program by generating markers and tags to define each segment, but does not disclose or imply segmenting a video program and “establishing a quantifiable significance corresponding to the plurality of in-and-out points” by way of a “rating value” as a result of voter input within any given segment (Abstract; Fig. 1; Para. 23). Peliotis further discloses that the markers and tags are fed to the filter/comparator along with, but not as a result of, the user preferences (Fig. 2).

With respect to the quinary cited reference, Lautzenheiser et al. merely discloses a method and apparatus for validating a survey database, but does not disclose or imply segmenting a video program by “establishing a quantifiable significance corresponding to the plurality of in-and-out points” by way of a “rating value” as a result of voter input within any given segment (Abstract; Figs. 41-46; Figs. 49-55; col. 29, l. 51 – col. 31, l. 7; col. 32, l. 61 – col. 34, l. 50).

In contrast to the cited art, the present invention involves the following salient features, *inter alia*: “receiving at least one string of content, the at least one string of content receiving step comprising **streaming the at least one string of content in real-time** for viewing while being captured; separating each at least one string of content into a plurality of segments, **each segment of the plurality of segments having a corresponding plurality of original in-and-out points**; creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, **the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment**; ... receiving a vote on each segment of the plurality of segments of each at least one string of content, wherein the vote reflects the quality of each segment of the plurality of segments of each at least one string of content, **thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment[.]**” [Emphasis added.]

Further, the Applicants respectfully submit that the previous Examiner may have inadvertently engaged in impermissible hindsight reconstruction, especially in light of the inordinate number of references cited, four references, by using the Applicants’ invention in order to arrive at Claim 18. Reiterating, the Examiner concedes: (1) that Franken fails to teach “separating each at least one string of content into a plurality of in-and-out points corresponding to each segment, wherein each segment has a plurality of original in-and-out points and herein the record identifies a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment” and (2) that Franken fails to teach “a vote, reflecting the quality of each segment of the content, is received on the content, thereby providing a rating value having a quantifiable significance to the in-and-out points and that the profile information is updated according to the vote.” As such, the Examiner concedes that the primary reference fails to disclose at least three of the claimed limitations, but cites the secondary reference, the tertiary reference, and the quaternary reference for reconstructing the present invention. Yet Claim 18 recites a combination of elements and limitations that include features well beyond what even these four cited references may, at best, disclose.

As such, the Applicants respectfully submit that the cited art does not teach, suggest, motivate, or otherwise obviate the combination of elements and limitations as respectively recited in herein amended independent Claim 16 and dependent Claim 18 of the present application:

16. A method of **interactively displaying and rating** at least one string of content, comprising the steps of:

identifying at least one string of content, the at least one string of content identifying step comprising streaming the at least one string of content in real-time for viewing while being captured;

separating each at least one string of content into a plurality of segments, each segment of the plurality of segments having a corresponding plurality of original in-and-out points;

creating profile information, in a record, associated with each segment of the plurality of segments of each at least one string of content, the record identifying a plurality of new in-and-out points within the plurality of original in-and-out points, thereby providing a plurality of in-and-out points within each segment;

showing the at least one string of content to a plurality of viewers on at least one display device, the at least one display device comprising at least one element selected from a group consisting essentially of a playback head, an information display area, a playback ring, and a rating value icon;

receiving a vote in real-time on each segment of the plurality of segments of the at least one string of content from each of the plurality of viewers, wherein the vote reflects the quality of each segment of the plurality of segments of the at least one string of content, thereby providing a rating value for establishing a quantifiable significance corresponding to the plurality of in-and-out points of each segment;

determining a rating value for each segment of the plurality of segments of the at least one string of content based on the vote; and

displaying each segment of the plurality of segments of the at least one string of content to the plurality of viewers based on the rating value of each segment of the plurality of segments of the at least one string of content. [Emphasis added.]

Accordingly, Claim 18 subsumes the foregoing limitations of its base claim by dependency.

Thus, the Applicants respectfully submit that Claim 18 has not been taught, suggested, motivated, or obviated in any other manner by the cited art. Therefore, the Applicants respectfully request that the previous ground for rejection of Claim 18 on this basis is withdrawn and that Claim 18 is passed to allowance in due course.

IV. Application Pending More than Five Years under MPEP §§ 707.02 and 708.01

Further, the Applicants respectfully submit that the present application has now been pending for over five years, i.e., **over six (6) years** as of the original filing date, **April 7, 2004**, of the present application. The relevant rules are as follows (MPEP §§ 707.02, 708.01):

707.02 Applications Up for Third Action and 5-Year Applications[R-2]

The supervisory patent examiners should impress their assistants with the fact that the shortest path to the final disposition of an application is by finding the best references on the first search and carefully applying them.

The supervisory patent examiners are expected to personally check on the pendency of every application which is up for the third or subsequent Office Action with a view to finally concluding its prosecution.

Any application that has been pending five years should be carefully studied by the supervisory patent examiner and every effort should be made to terminate its prosecution.

In order to accomplish this result, the application is to be considered “special” by the examiner.

708.01 List of Special Cases [R-2]

37 CFR 1.102 Advancement of examination.

The following is a list of special cases (those which are advanced out of turn for examination):

(A) Applications wherein the inventions are deemed of peculiar importance to some branch of the public service and when for that reason the head of some department of the Government requests immediate action and the *>Director of the USPTO< so orders (37 CFR 1.102).

(B) Applications made special as a result of a petition. (See MPEP § 708.02.)

Subject alone to diligent prosecution by the applicant, an application for patent that has once been made special and advanced out of turn for examination by reason of a ruling made in that particular case (by the Director of the USPTO or a Commissioner) will continue to be special throughout its entire course of prosecution in the U.S. Patent and Trademark Office, including appeal, if any, to the Board of Patent Appeals and Interferences.

(C) Applications for reissues, particularly those involved in stayed litigation (37 CFR 1.176).

(D) Applications remanded by an appellate tribunal for further action.

(E) An application, once taken up for action by an examiner according to its effective filing date, should be treated as special by an examiner, art unit or Technology Center to which it may subsequently be transferred; exemplary situations include new cases transferred as the result of a telephone election and cases transferred as the result of a timely reply to any official action.

(F) Applications which appear to interfere with other applications previously considered and found to be allowable, or which will be placed in interference with an unexpired patent or patents.

(G) Applications ready for allowance, or ready for allowance except as to formal matters.

(H) Applications which are in condition for final rejection.

(I) Applications pending more than 5 years, including those which, by relation to a prior United States application, have an effective pendency of more than 5 years. See MPEP § 707.02.

(J) Reexamination proceedings, MPEP § 2261.


Thus, the Applicants respectfully submit that, since the present application has now been pending for over six (6) years as of the original filing date of the present application, the present application should be treated as “special” by the examiner under MPEP §§ 707.02 and 708.01 and that examination of the present application should be advanced. Therefore, the Applicants respectfully request that the grounds for rejection of the Claims on the foregoing bases are withdrawn and that remaining Claims are passed to allowance in due course.

CONCLUSION

Accordingly, Claims 1, 15, 16, 21, and 25 have been herein amended to better encompass the present invention. The Applicants respectfully reassert that no claim has been narrowed within the meaning of *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.* (Fed.Cir. November 29, 2000). By way of the foregoing amendment, the Applicants believe that the Claims are in condition for allowance and are, alternatively, in condition for appeal. Thus, reconsideration of the Claims in view of the foregoing amendment and remarks is respectfully requested. However, should any remaining issues be outstanding, the Applicants respectfully reiterate the invitation to telephone Mr. Thomas F. Lebens at (805) 781-2865 so that such issues may be resolved as expeditiously as possible. In the event that any additional fees become due or payable, the Examiner is authorized to charge USPTO Deposit Account No. 06-1135 accordingly.

Respectfully submitted,

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